

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JEREMY GILPIN, *et al.*,

Plaintiffs,

v.

CU CAPITAL MARKET SOLUTIONS, LLC,
et al.,

Defendants.

Case No. 3:20-cv-00589-MMD-WGC

ORDER

I. SUMMARY

Plaintiffs Jeremy Gilpin and Hardaway Capitol Group, LLC (“Hardaway”) filed a first amended complaint against Defendants CU Capital Market Solutions, LLC (“CU-CMS”) and Capital Markets Management Group (“CMMG”) arising from events following the conclusion of two bio refinery projects in Nevada. (ECF No. 14 (“FAC”).) Before the Court is Defendants’ motion to dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. (ECF No. 23 (“Motion”).)¹ Because the Court finds that it does not have diversity jurisdiction over this action—and as further explained below—Defendants’ Motion is granted.

II. BACKGROUND

The following facts are taken from Plaintiffs’ FAC (ECF No. 14), unless noted otherwise. Jeremy Gilpin is a resident of Nevada and a senior executive of Greater Nevada Commercial Lending, LLC. (*Id.* at 2.) Gilpin is also the manager of Hardaway, which is a limited liability company incorporated and has a principal place of business in Nevada. (*Id.*) On the other hand, CU-CMS and CMMG are both Georgia limited liability

¹The Court has additionally reviewed the parties’ corresponding response and reply. (ECF Nos. 24, 28.)

1 companies. (*Id.* at 2-3.) CU-CMS is a credit union service organization located in
2 Kansas but also maintains an office in Georgia. (*Id.* at 2.) CMMG has a principal place
3 of business in Georgia. (*Id.* at 3.)

4 Plaintiffs invoke this Court's diversity jurisdiction under 28 U.S.C. § 1332. (*Id.*)
5 Plaintiffs allege that for several years, numerous parties—including Defendants—have
6 been litigating in multiple forums “to stake their claims for fees stemming from two large
7 financing transaction” that Gilpin arranged regarding renewable energy projects in
8 Nevada. (*Id.* at 4.) Plaintiffs seek a declaratory judgement against Defendants, and
9 further alleges Defendants engaged in intentional interference with contractual relations
10 and intentional interference with prospective economic activity. (*Id.* at 18-22.) This
11 resulted in damages to Plaintiffs in excess of \$75,000. (*Id.* at 18-22.)

12 Further relevant to this order, the parties do not dispute that CU-CMS includes
13 three credit unions: Jefferson Financial Credit Union (“Jefferson Financial”), Freedom
14 Northwest Credit Union (“Freedom Northwest”) and SunState Federal Credit Union
15 (“SunState”). (ECF Nos. 23 at 9, 24 at 8.) These three credit unions are federally
16 chartered unions. (ECF No. 23 at 9.)

17 Plaintiffs state in their opposition that Jefferson Financial is “headquartered in
18 Metairie, Louisiana, with more than a dozen locations in south Louisiana” and that
19 “eligibility for membership in Jefferson Financial is limited only to certain counties and
20 parishes in Louisiana and Alabama.” (ECF No. 24 at 8.) Defendants attached a
21 declaration to their reply from the Chief Executive Officer of Jefferson Financial
22 declaring that Jefferson Financial conducts business and makes loans in Louisiana and
23 Alabama, and that “15% of the revenues of Jefferson Financial is received from
24 business conducted outside of the state of Louisiana.” (ECF No. 28-1 at 2-3.)

25 As to the remaining two credit unions, Plaintiffs assert in response to the Motion
26 that Freedom Northwest is located and operates in Idaho. (ECF No. 24 at 9.) SunState
27 operates and restricts its membership to Florida, where it is located. (*Id.*)

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III. LEGAL STANDARD

Rule 12(b)(1) of the Federal Rules of Civil Procedure (“FRCP”) allows defendants to seek dismissal of a claim or action for a lack of subject matter jurisdiction. Although the defendant is the moving party in a motion to dismiss brought under Rule 12(b)(1), the plaintiff is the party invoking the court’s jurisdiction. As a result, the plaintiff bears the burden of proving that the case is properly in federal court. See *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001) (citing *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)). Plaintiff’s burden is subject to a preponderance of the evidence standard. See *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014).

Federal courts are courts of limited jurisdiction. See *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears. See *Stock W., Inc. v. Confederated Tribes of Colville Rsrv.*, 873 F.2d 1221, 1225 (9th Cir. 1989) (citation omitted). “Because subject matter jurisdiction goes to the power of the court to hear a case, it is a threshold issue and may be raised at any time and by any party.” *Mallard Auto. Grp., Ltd. v. United States*, 343 F. Supp. 2d 949, 952 (D. Nev. 2004) (citing FRCP 12(b)(1)).

Moreover, district courts have original jurisdiction over civil actions where the matter is between citizens of different states and the amount exceeds \$75,000. 28 U.S.C. § 1332(a)(1). Diversity jurisdiction exists when there is “complete diversity of citizenship, *i.e.*, every plaintiff be a citizen of a different state from every defendant.” *Carpenter v. PNC Bank, N.A.*, 368 F. Supp. 3d 1339, 1344 (D. Haw. 2019) (citing *GranCare, LLC v. Thrower*, 889 F.3d 543, 548 (9th Cir. 2018)). Although corporations are citizens of any state in which they are incorporated or have their principal place of business, “an LLC is a citizen of every state of which its owners/members are citizens.” *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006).

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1 IV. DISCUSSION

2 Defendants argue this action should be dismissed because: (1) complete
3 diversity does not exist between the parties; (2) the amount in controversy does not
4 exceed \$75,000; and the *Colorado River*² abstention doctrine applies to this action.
5 (ECF No. 23 at 8-14.) Because the issue of complete diversity proves to be dispositive,
6 the Court will address the parties' two arguments below with respect to this issue and
7 declines to resolve Defendants' remaining arguments.

8 1) Federally-Chartered Corporations

9 Defendants assert the federally chartered credit unions of CU-CMS are not
10 considered citizens of any particular state, therefore complete diversity does not exist in
11 a dispute between a citizen of a state and a federally chartered credit union.³ (ECF No.
12 23 at 8-10.) Plaintiffs counter that the citizenship of a federal chartered credit union
13 should be based on its principal place of business pursuant to 28 U.S. C. § 1332(c)(1)
14 as set forth in *Navy Fed. Credit Union v. LTD Fin. Servs.*, 972 F. 3d 344 (4th Cir. 2020).
15 (ECF No. 24 at 10-13.) As further support, Plaintiffs cite to *Lloyd v. Navy Fed. Credit*
16 *Union*, Case No. 17-cv-1280-BAS-RBB, 2019 WL 2269958 (S.D. Cal. May 28, 2019).
17 (*Id.* at 12.) While courts appear split on this issue, the Court agrees with Defendants.

18 In *Hancock Fin. Corp. v. Fed. Sav. & Loan Ins. Corp.*, the Ninth Circuit held there
19 was no subject matter jurisdiction under 28 U.S.C. § 1332 over Federal Savings and
20 Loan Insurance Corporation ("FSLIC") because the agency was an instrumentality of
21 the federal government and thus not a citizen of any state for the purposes of diversity.
22 492 F.2d 1325, 1329 (9th Cir. 1974). In reaching this conclusion, the Ninth Circuit relied
23 on *Fed. Deposit Ins. Corp. v. Nat'l Sur. Corp.*, 345 F. Supp. 885, 888 (S.D. Iowa 1972)
24 (holding that the Federal Deposit Insurance Corporation ("FDIC")—chartered by the
25 federal government—had no citizenship in any particular state thus no diversity of
26 citizenship existed). The rationale in both cases was that if the FSLIC and FDIC were

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28 ²See *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800 (1976).

³The Court notes the parties do not dispute that CMMG is a diverse Defendant from Plaintiffs in this action. (See ECF Nos. 24 at 5-6, 28 at 5.)

1 citizens of the District of Columbia then almost every suit against it would be based
 2 upon diversity jurisdiction, and this would have circumvented the intent of Congress to
 3 limit the scope of jurisdiction over federally chartered corporations in 28 U.S.C. § 1349.
 4 *Id.*; *Hancock*, 492 F.2d at 1329.

5 Here, CU-CMS is a limited liability company and a credit union service
 6 organization. CU-CMS includes three federally chartered credit unions: Jefferson
 7 Financial, Freedom Northwest, and SunState.⁴ Thus, under *Hancock*, as federally
 8 chartered credit unions, these entities have no citizenship in any particular state for
 9 purposes of diversity jurisdiction.

10 Plaintiffs argue this Court should apply the *Navy Fed.*'s principal place of
 11 business approach, pursuant to 28 U.S.C. § 1332(c)(1), to establish citizenship of the
 12 federally chartered credit unions as Louisiana, Idaho, and Florida. (ECF No. 24 at 13.)
 13 However, *Hancock* implicitly rejected application of the principal place of business
 14 analysis to federally chartered entities. The Ninth Circuit, in holding the FSLIC is not a
 15 citizen of any particular state for diversity purposes, explicitly noted the FDIC, as was
 16 the FSLIC, was "also chartered by the federal government." *Hancock*, 492 F.2d at 1329.
 17 Moreover, as the court in *Pierson v. Alaska USA Fed. Credit Union* articulated, if 28
 18 U.S.C. § 1332(c) were to be read as permitting jurisdiction over federally-chartered
 19 corporations based on their principal place of business, it "would contravene the
 20 statute's primary purpose to reduce the caseload in the federal courts." Case No. 2:19-
 21 cv-1685-RAJ, 2020 WL 747857, at *2 (W.D. Wash. Feb. 14, 2020) (citing S. Rep. No.
 22 1830 (1983)). After it rejected the § 1332(c) argument, the *Pierson* court went on to find

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 24 ⁴The Court notes that Plaintiffs included in their response a brief reference to a
 25 case in the U.S. District Court for the District of Kansas whereby CU-CMS was a party.
 26 (ECF No. 24 at 4.) The reference seeks to highlight that Defendants asserted in that
 27 case, upon a show cause order regarding diversity jurisdiction, CU-CMS's federal credit
 28 unions were not members of CU-CMS but rather "Unit Holders." (*Id.*) Plaintiffs fail to
 provide much else in their response and it is unclear to the Court if Plaintiffs are seeking
 to factually attack that the federal credit unions are not members of CU-CMS as
 Defendants allegedly argued in the Kansas case. Additionally, it is not clear to the Court
 whether Plaintiffs are arguing offensive collateral estoppel. As such, the Court declines
 to address the issue further as it is Plaintiffs' burden to prove that the case is properly in
 federal court. See *McCauley*, 264 F.3d at 957.

1 that “federal credit unions are not considered citizens of any particular state for the
 2 purpose of establishing diversity of citizenship.” *Id.* See also *Broadbridge Fin. Sols., Inc.*
 3 *v. CNBS, LLC*, Case No. 15 Civ. 4978 (PAC), 2016 WL 1222339, at *1 (S.D.N.Y. Mar.
 4 23, 2016) (brackets and citation omitted) (“The general rule with respect to federal credit
 5 unions is that . . . they are not considered to be citizens of any particular state for the
 6 purpose of establishing diversity of citizenship.”)

7 Because Plaintiffs do not dispute the federal credit unions of CMS are federally
 8 chartered, and in light of *Hancock’s* rejection of the principal place of business
 9 approach, the Court concludes that it lacks diversity jurisdiction over this action.

10 **2) Localized Exception**

11 Plaintiffs argue the general rule that federally chartered corporations are not
 12 citizens of any state does not apply to CU-CMS because of the “localized exception.”
 13 (ECF No. 24 at 6-10.) Under this exception, Plaintiffs argue Jefferson Financial,
 14 Freedom Northwest, and SunState are localized credit unions with limited geographical
 15 presence respectively in Louisiana, Idaho, and Florida, and therefore complete diversity
 16 exists in this action. (*Id.* at 9.) Defendants counter that at least one of CU-CMS’s credit
 17 unions—Jefferson Financial—does not have a limited presence. (ECF No. 28 at 6.) The
 18 Court agrees with Defendants.

19 Plaintiffs quote *Lehman Bros. Bank, FSB v. Frank T. Yoder Mortg., Inc.*, 415 F.
 20 Supp. 2d 636, 640 (E.D. Va. 2006) in their opposition to set forth the localized exception
 21 rule. (ECF No. 24 at 7 (“a federally chartered corporation may be eligible for diversity
 22 jurisdiction where its activities are sufficiently localized so that it may be deemed a
 23 citizen of a single state.”).) Plaintiffs subsequently state, “Jefferson Financial is
 24 headquartered in Metairie, Louisiana, with more than a dozen locations in south
 25 Louisiana” and that “eligibility for membership in Jefferson Financial is limited only to
 26 certain counties and parishes in Louisiana *and Alabama*.” (*Id.* at 8, 9 (emphasis
 27 added).)

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Defendants attached a declaration to their reply from the Chief Executive Officer of Jefferson Financial declaring that it conducts business and makes loans in Louisiana and Alabama, and that “15% of the revenues of Jefferson Financial is received from business conducted outside of the state of Louisiana.” (ECF No. 28-1 at 2-3.) Because it is undisputed that Jefferson Financial has a business presence outside of Louisiana—specifically Alabama—its activities are thus not sufficiently localized and not the kind of “peculiarly local” federally chartered credit union to warrant it be deemed a citizen of one state for diversity jurisdiction. *See Feuchtwanger Corp. v. Lake Hiawatha Fed. Credit Union*, 272 F.2d 453, 455 (3rd Cir. 1959) (exercising diversity jurisdiction over a federal credit union with a “peculiarly local institution of a single community” in a state); *see also Pierson*, 2020 WL 747857, at *2 (finding the localized exception did not apply to a federal credit union with locations in three different states). Accordingly, and in consideration of Jefferson Financial being federally chartered as discussed above, the Court finds it does not have diversity jurisdiction over this action.


V. CONCLUSION

The Court notes that Plaintiffs and Defendants made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the Motion.

It is therefore ordered that Defendants’ motion to dismiss (ECF No. 23) is granted.

The Clerk of Court is directed to enter judgment accordingly and to close this case.

DATED THIS 10th Day of September 2021.



MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE